

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
12-cv-00589-UA-JEP

MARCIE FISHER-BORNE, for herself
and as guardian *ad litem* for M.F.-B., a
minor, *et al.*,

Plaintiffs,

v.

JOHN W. SMITH, in his official capacity
as the Director of the North Carolina
Administrative Office of the Courts, *et al.*;

Defendants.

**PLAINTIFFS' SUGGESTION OF
SUBSEQUENTLY DECIDED
AUTHORITIES**

Pursuant to Rule 7.3(i) of the Local Rules of Civil Procedure of the United States District Court for the Middle District of North Carolina, Plaintiffs respectfully submit this suggestion of subsequently decided authorities as an addendum to Plaintiffs' Opposition to Defendants' Motion to Dismiss (Docket No. 69).

Attached hereto as Exhibit 1 is a copy of the decision in *Kitchen v. Herbert*, 2:13-CV-217, 2013 WL 6697874, at **9, 11, 29 (D. Utah Dec. 20, 2013) ("*Baker v. Nelson* is no longer controlling precedent and the court proceeds to address the merits of the question presented here. . . . The right to marry is an example of a fundamental right that is not mentioned explicitly in the text of the Constitution but is nevertheless protected by the guarantee of liberty under the Due Process Clause. . . ." The ban on same-sex marriage "discriminates on the basis of sexual identity without a rational reason to do so").

Attached hereto as Exhibit 2 is a copy of the decision in *Bishop v. U.S. ex rel. Holder*, 04-CV-848-TCK-TLW, 2014 WL 116013, at *15 (N.D. Okla. Jan. 14, 2014) (“The Court concludes: (1) *Baker v. Nelson* is not binding precedent; (2) *Windsor*’s reasoning does not mandate a particular outcome for the Bishop couple or Smith; and (3) Part A intentionally discriminates against same-sex couples desiring an Oklahoma marriage license without a legally sufficient justification.”).

Dated: January 21, 2014
Raleigh, North Carolina

Rose A. Saxe
James D. Esseks
American Civil Liberties Union Foundation
125 Broad Street
New York, New York 10004-2400
Telephone: (212) 549-2500
Facsimile: (212) 549-2646
rsaxe@aclu.org
jesseks@aclu.org

Elizabeth O. Gill
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, California 94111-4805
Telephone: (415) 343-1237
Facsimile: (415) 255-1478
egill@aclunc.org

Christopher Brook
N.C. State Bar No. 33838
ACLU of North Carolina
P.O. Box 28004
Raleigh, North Carolina 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
cbrook@acluofnc.org

/s/ Jonathan D. Sasser

Jonathan D. Sasser
N.C. State Bar No. 10028
Jeremy M. Falcone
N.C. State Bar No. 36182
Ellis & Winters LLP
P.O. Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
jon.sasser@elliswinters.com
jeremy.falcone@elliswinters.com

Garrard R. Beeney
David A. Castleman
C. Megan Bradley
William R.A. Kleysteuber
Daniel W. Meyler
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
beeneyg@sullcrom.com
castlemand@sullcrom.com
bradleyc@sullcrom.com
kleysteuberr@sullcrom.com
meylerd@sullcrom.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2014, I electronically filed the foregoing Plaintiffs' Suggestion of Subsequently Decided Authority with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jonathan D. Sasser

Jonathan D. Sasser
N.C. State Bar No. 10028
Email: jon.sasser@elliswinters.com
ELLIS & WINTERS LLP
P.O. Box 33550
Raleigh, NC 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

Attorneys for Plaintiffs